

II. Cancelled and new claims

Claims 1-7 and 10-20 are cancelled without prejudice or disclaimer to further prosecution in future continuation application(s).

Support for “botulinum toxin types A, B, C, D, E and F.” in claim 24 can be found at least at page 25, lines 27-29 of the specification.

Support for “in an amount of between about 10^{-3} U/kg and about 10 U/kg” in claim 25 can be found at least at page 23, lines 4-5 of the specification.

Support for “implantation of a botulinum toxin containing controlled release system” in claim 26 can be found at least at page 28, lines 4-7 of the specification.

Support for “using a stereotactic placement apparatus” in claim 27 can be found at least at page 31, line 25 to page 32, line 17 of the specification.

Support for “botulinum toxin type A is administered in an amount between about 10^{-4} U/kg and about 10 U/kg” in claim 28 can be found at least at page 24, lines 5-6 of the specification.

The Office Action has indicated that claims 20-21 are allowable. New claims 24-27 and 28, which depend from allowable claims 20 and 21, respectively, more narrowly define/recite particular aspects of the invention than allowable claims 20-21. Accordingly, claims 24-28 are also allowable.

New claim 29 is supported by at least allowable claim 21 and thus does not raise any additional issues or present any new matter and is accordingly also allowable.

III. Rejection of claims 1-4, 7, 17 and 20 under 35 U.S.C. 102 (b)

The Office Action rejects claims 1-4, 7, 17 and 20 under 35 U.S.C. 102 (b) as being anticipated by Micheli et al. (1998) ("Micheli") . Applicant traverses the rejection.

However and solely to expedite prosecution, and without conceding the correctness of the Office Action's rejections, claims 1-4, 7, 17 and 20 in this application are hereby canceled without prejudice or disclaimer to further prosecution at a later date, in order to advance prosecution of the instant application.

Thus, this rejection should be withdrawn.

IV. Rejection of claims 1-7, 12-16 and 20 under 35 U.S.C. 102 (b)

The Office Action rejects claims 1-7, 12-16 and 20 under 35 U.S.C. 102(b) as being anticipated by Auchus et al. ("Auchus"). Applicant traverses the rejection.

Applicant maintains the traversal of this rejection, however and solely to expedite prosecution, and without conceding the correctness of the Office Action's rejections, claims 1-7, 12-16 and 20 in this application are canceled without prejudice or disclaimer to further prosecution at a later date, in order to advance prosecution of the instant application.

Thus, this rejection should be withdrawn.

V. Rejection of claims 1-7 and 10-20 on the grounds of nonstatutory obviousness-type double patenting

The Office Action rejected claims 1-7 and 10-20 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent 6,620,415. The Office Action also rejected claims 1-7 and 10-20 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over and claims 1-8 of co-pending Application No. 10/421,504.

Claims 1-7 and 10-20 are no longer pending in the instant application, having been cancelled prejudice or disclaimer to further prosecution at a later date, solely in order to advance prosecution of the instant application.

Thus, these rejections should be withdrawn.

VI. Conclusion

All issues raised in the final Office Action have been addressed and the application is now in condition for allowance.

The Commissioner is hereby authorized to charge any fees required or necessary for the filing, processing or entering of this paper or any of the enclosed papers and to refund any overpayment to deposit account 01-0885.

Respectfully submitted,

/Claude L. Nassif/

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